

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BARBARA ANN JOHNSTON
Claimant

VS.

LAICH INDUSTRIES CORPORATION
Respondent

AND

ATLANTIC MUTUAL INSURANCE COMPANY
Insurance Carrier

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Docket No. 220,172

ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Julie A. N. Sample dated November 4, 1998, wherein the Administrative Law Judge granted claimant benefits in the form of medical treatment under the authorized care of Brian Healy, M.D., until claimant reaches maximum medical improvement or until further order.

ISSUES

Did claimant suffer accidental injury arising out of and in the course of her employment with respondent on the date or dates alleged or did claimant suffer an intervening injury negating respondent's responsibility in this matter?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Claimant suffered accidental injury arising out of and in the course of her employment on December 18, 1996, while working for respondent, Laich Industries Corporation. Claimant was provided medical treatment including a lumbar laminectomy/discectomy on the left side on April 4, 1997. Following the surgery claimant returned to Laich Industries, but continued to have low back and left lower extremity symptoms. Claimant was again taken off work. An MRI was taken of claimant's lower back on June 30, 1997. In October, 1997, claimant was released and rated but continued to experience low back and leg pain. Claimant continued treating with Dr. Healy. She also changed jobs to Richmond Nursing Home.

On June 9, 1998, claimant was involved in a motor vehicle accident when a truck backed into the driver's side of her car. Claimant acknowledged experiencing increased symptoms in her low back, and was taken to the Anderson County Hospital and Saint Joseph Health Center for treatment. Claimant testified that symptoms directly after the accident were more severe than those suffered before the accident, but soon the pain was reduced to a level similar to that of June 1997.

Claimant was returned to Dr. Healy after the automobile accident and provided additional treatment. Dr. Healy acknowledged in his letter of September 10, 1998, that the June 9, 1998 automobile accident would have, at the very most, been an aggravation of the underlying condition and did, perhaps, cause further herniation of the disc. He then went on to say claimant's condition was a continuation of her current workers compensation problems and dated back to her December 1996 injury.

In proceedings under the Workers Compensation Act, the burden of proof is on claimant to establish claimant's right to an award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 1996 Supp. 44-501 and K.S.A. 1996 Supp. 44-508(g).

In this instance, Dr. Healy's medical report is somewhat contradictory in that he finds the condition to have been aggravated by a motor vehicle accident but also states that it is a continuation of her workers compensation problems from the December 1996 injury. The Appeals Board finds, for preliminary hearing purposes, that his opinion which finds this to be a continuation of the worker's related injury is the strongest opinion expressed by Dr. Healy. In addition, when considering the ongoing symptoms experienced by claimant immediately before the automobile accident, the Appeals Board finds the most credible medical evidence supports the award of benefits in this instance.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Julie A. N. Sample, dated November 4, 1998, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December, 1998.

BOARD MEMBER

c: Geoffrey Schmidt, Overland Park, KS
Denise E. Tomasic, Kansas City, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director